



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

FEB 25 2013

REPLY TO THE ATTENTION OF:
WN-16J

Marcia T. Willhite
Chief, Bureau of Water
Illinois Environmental Protection Agency
Post Office Box 19276
Springfield, Illinois 62794-9276

Dear Ms. Willhite:

I am writing to bring to your attention an issue that the U.S. Environmental Protection Agency has identified regarding the granting of provisional variances to point source dischargers pursuant to 35 Ill. Admin. Code Part 104 Subpart C. Under this provision, Illinois Environmental Protection Agency (Illinois EPA) has granted provisional variances when compliance on a short term basis with any rule or regulation, requirement or order of the Illinois Pollution Control Board (IPCB), or with any permit requirement, would impose an "arbitrary or unreasonable hardship" under the rule.

The high temperatures and severe drought conditions of last year prompted some NPDES permittees to request provisional variances from thermal limitations in their NPDES permits from Illinois EPA. EPA's review of the provisional variances issued last year found that Illinois EPA did not fulfill the federal requirements for permit modification. Under its approved National Pollutant Discharge Elimination System (NPDES) program and Illinois law, a change to an Illinois NPDES permit term or condition must be implemented in accordance with 40 C.F.R. §122.62, § 122.63, and §124.10 or more stringent state regulations. These regulations are applicable to states under 40 C.F.R. §123.25.

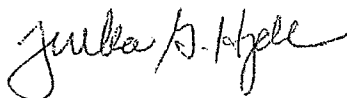
EPA has not received any submissions of the provisional variances for approval as required under the Clean Water Act (CWA). Approval is required when the variance would result in a modification of water quality or technology-based standards. Variances from water quality standards are themselves changes to water quality standards that must be submitted to EPA for review consistent with section 303(c)(2)(A) of the CWA. Such variances must be approved by EPA consistent with the federal regulations at 40 C.F.R. §131.21 before they become effective for CWA purposes, including serving as the basis for a limit or condition in a NPDES permit. Variances from technology-based standards may also be available under certain limited circumstances under the CWA. The implementing federal regulations that pertain to modifications to technology-based standards requiring EPA approval are found at 40 C.F.R. Parts 122, 124, 125 and 133.



EPA is committed to working with Illinois EPA to ensure that any relief provided to NPDES permittees is consistent with federal law. Under the approved NPDES program, Illinois EPA must public notice and take comment on permit modifications as required by 40 C.F.R. §122.62. To the extent required by federal law, Illinois EPA must submit to EPA for approval any provisional variance that modifies water quality or technology standards.

If you have any questions, please contact Kevin Pierard, Chief of the NPDES Programs Branch, at (312) 886-4448.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Tinka G. Hyde".

Tinka G. Hyde
Director, Water Division

cc: Mr. Thomas Holbrook
Chairman, Illinois Pollution Control Board